

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

STEVEN LEIJA RODRIGUES, PRO SE,	§	
also known as STEVEN LEIJA RODRIGUEZ,	§	
TDCJ-CID No. 1321746,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:09-CV-0313
	§	
RICK PERRY ET AL,	§	
	§	
Defendants.	§	

ORDER OF DISMISSAL

Plaintiff STEVEN LEIJA RODRIGUES, while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against five named defendants, and has been granted permission to proceed *in forma pauperis*.

On January 27, 2010, a Report and Recommendation was issued by the United States Magistrate Judge recommending the instant cause be dismissed with prejudice to being asserted again until the *Heck* conditions are met¹, and without prejudice for failure to state a claim on which relief can be granted.

Plaintiff filed his Objections on February 16, 2010. In relevant part, plaintiff seeks to amend his complaint to state that he suffered harm from the attribution to plaintiff of a conviction of a Leonard Christopher Cantley. Plaintiff now says “[t]he state sent the body of plaitiff [sic] to tdcj under a delivery order Leonard christopher cantley [lower cases in the

¹ ⁵*Johnson v. McElveen*, 101 F.3d 423, 424 (5th Cir. 1996).

original], a conviction that is not his , for which he served out untill [sic] state can affirm, illegal convictions, frivolous [sic] appeals, and opinions issue by state judges in there [sic] role in enforcing federal law.” In its present form, this claim appears to be an attack on plaintiff’s imprisonment which must be pursued initially through habeas corpus, with its attendant prerequisite of exhaustion of state remedies.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the Objections filed by the plaintiff.

The Court is of the opinion that the objections of the plaintiff should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does OVERRULE plaintiff’s objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that the Civil Rights Complaint by STEVEN LEIJA RODRIGUES is DISMISSED WITH PREJUDICE TO BEING ASSERTED AGAIN UNTIL THE *HECK* CONDITIONS ARE MET², AND WITHOUT PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

ANY CLAIMS SOUNDING IN HABEAS CORPUS ARE DISMISSED WITHOUT PREJUDICE TO BEING REASSERTED IN A PETITION FOR WRIT OF HABEAS CORPUS.

LET JUDGMENT BE ENTERED ACCORDINGLY.

² ⁵ *Johnson v. McElveen*, 101 F.3d 423, 424 (5th Cir. 1996).

The Clerk shall send a copy of this order to plaintiff and to any attorney of record. The Clerk shall also mail copies of this order to TDCJ-Office of the General Counsel, P.O. Box 13084, Austin, TX 78711; and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

IT IS SO ORDERED.

Signed this the 20th day of September, 2010.

/s/ Mary Lou Robinson
MARY LOU ROBINSON
United States District Judge